



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5441

Introduced 1/31/2022, by Rep. Mark L. Walker - Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-0.1

Amends the Criminal Code of 2012. Provides that for purposes of the Sex Offenses Article of the Code, "unable to give knowing consent" also includes when the victim is intoxicated, but the accused did not provide or administer the intoxicating substance.

LRB102 25463 RLC 34749 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by
5 changing Section 11-0.1 as follows:

6 (720 ILCS 5/11-0.1)

7 Sec. 11-0.1. Definitions. In this Article, unless the
8 context clearly requires otherwise, the following terms are
9 defined as indicated:

10 "Accused" means a person accused of an offense prohibited
11 by Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of
12 this Code or a person for whose conduct the accused is legally
13 responsible under Article 5 of this Code.

14 "Adult obscenity or child pornography Internet site". See
15 Section 11-23.

16 "Advance prostitution" means:

17 (1) Soliciting for a prostitute by performing any of
18 the following acts when acting other than as a prostitute
19 or a patron of a prostitute:

20 (A) Soliciting another for the purpose of
21 prostitution.

22 (B) Arranging or offering to arrange a meeting of
23 persons for the purpose of prostitution.

1 (C) Directing another to a place knowing the
2 direction is for the purpose of prostitution.

3 (2) Keeping a place of prostitution by controlling or
4 exercising control over the use of any place that could
5 offer seclusion or shelter for the practice of
6 prostitution and performing any of the following acts when
7 acting other than as a prostitute or a patron of a
8 prostitute:

9 (A) Knowingly granting or permitting the use of
10 the place for the purpose of prostitution.

11 (B) Granting or permitting the use of the place
12 under circumstances from which he or she could
13 reasonably know that the place is used or is to be used
14 for purposes of prostitution.

15 (C) Permitting the continued use of the place
16 after becoming aware of facts or circumstances from
17 which he or she should reasonably know that the place
18 is being used for purposes of prostitution.

19 "Agency". See Section 11-9.5.

20 "Arranges". See Section 11-6.5.

21 "Bodily harm" means physical harm, and includes, but is
22 not limited to, sexually transmitted disease, pregnancy, and
23 impotence.

24 "Care and custody". See Section 11-9.5.

25 "Child care institution". See Section 11-9.3.

26 "Child pornography". See Section 11-20.1.

1 "Child sex offender". See Section 11-9.3.

2 "Community agency". See Section 11-9.5.

3 "Conditional release". See Section 11-9.2.

4 "Consent" means a freely given agreement to the act of
5 sexual penetration or sexual conduct in question. Lack of
6 verbal or physical resistance or submission by the victim
7 resulting from the use of force or threat of force by the
8 accused shall not constitute consent. The manner of dress of
9 the victim at the time of the offense shall not constitute
10 consent.

11 "Custody". See Section 11-9.2.

12 "Day care center". See Section 11-9.3.

13 "Depict by computer". See Section 11-20.1.

14 "Depiction by computer". See Section 11-20.1.

15 "Disseminate". See Section 11-20.1.

16 "Distribute". See Section 11-21.

17 "Family member" means a parent, grandparent, child, aunt,
18 uncle, great-aunt, or great-uncle, whether by whole blood,
19 half-blood, or adoption, and includes a step-grandparent,
20 step-parent, or step-child. "Family member" also means, if the
21 victim is a child under 18 years of age, an accused who has
22 resided in the household with the child continuously for at
23 least 6 months.

24 "Force or threat of force" means the use of force or
25 violence or the threat of force or violence, including, but
26 not limited to, the following situations:

1 (1) when the accused threatens to use force or
2 violence on the victim or on any other person, and the
3 victim under the circumstances reasonably believes that
4 the accused has the ability to execute that threat; or

5 (2) when the accused overcomes the victim by use of
6 superior strength or size, physical restraint, or physical
7 confinement.

8 "Harmful to minors". See Section 11-21.

9 "Loiter". See Section 9.3.

10 "Material". See Section 11-21.

11 "Minor". See Section 11-21.

12 "Nudity". See Section 11-21.

13 "Obscene". See Section 11-20.

14 "Part day child care facility". See Section 11-9.3.

15 "Penal system". See Section 11-9.2.

16 "Person responsible for the child's welfare". See Section
17 11-9.1A.

18 "Person with a disability". See Section 11-9.5.

19 "Playground". See Section 11-9.3.

20 "Probation officer". See Section 11-9.2.

21 "Produce". See Section 11-20.1.

22 "Profit from prostitution" means, when acting other than
23 as a prostitute, to receive anything of value for personally
24 rendered prostitution services or to receive anything of value
25 from a prostitute, if the thing received is not for lawful
26 consideration and the person knows it was earned in whole or in

1 part from the practice of prostitution.

2 "Public park". See Section 11-9.3.

3 "Public place". See Section 11-30.

4 "Reproduce". See Section 11-20.1.

5 "Sado-masochistic abuse". See Section 11-21.

6 "School". See Section 11-9.3.

7 "School official". See Section 11-9.3.

8 "Sexual abuse". See Section 11-9.1A.

9 "Sexual act". See Section 11-9.1.

10 "Sexual conduct" means any knowing touching or fondling by
11 the victim or the accused, either directly or through
12 clothing, of the sex organs, anus, or breast of the victim or
13 the accused, or any part of the body of a child under 13 years
14 of age, or any transfer or transmission of semen by the accused
15 upon any part of the clothed or unclothed body of the victim,
16 for the purpose of sexual gratification or arousal of the
17 victim or the accused.

18 "Sexual excitement". See Section 11-21.

19 "Sexual penetration" means any contact, however slight,
20 between the sex organ or anus of one person and an object or
21 the sex organ, mouth, or anus of another person, or any
22 intrusion, however slight, of any part of the body of one
23 person or of any animal or object into the sex organ or anus of
24 another person, including, but not limited to, cunnilingus,
25 fellatio, or anal penetration. Evidence of emission of semen
26 is not required to prove sexual penetration.

1 "Solicit". See Section 11-6.

2 "State-operated facility". See Section 11-9.5.

3 "Supervising officer". See Section 11-9.2.

4 "Surveillance agent". See Section 11-9.2.

5 "Treatment and detention facility". See Section 11-9.2.

6 "Unable to give knowing consent" includes when the accused
7 administers any intoxicating or anesthetic substance, or any
8 controlled substance causing the victim to become unconscious
9 of the nature of the act and this condition was known, or
10 reasonably should have been known by the accused. "Unable to
11 give knowing consent" also includes when the victim is
12 intoxicated, but the accused did not provide or administer the
13 intoxicating substance. As used in this paragraph,
14 "unconscious of the nature of the act" means incapable of
15 resisting because the victim meets any one of the following
16 conditions:

17 (1) was unconscious or asleep;

18 (2) was not aware, knowing, perceiving, or cognizant
19 that the act occurred;

20 (3) was not aware, knowing, perceiving, or cognizant
21 of the essential characteristics of the act due to the
22 perpetrator's fraud in fact; or

23 (4) was not aware, knowing, perceiving, or cognizant
24 of the essential characteristics of the act due to the
25 perpetrator's fraudulent representation that the sexual
26 penetration served a professional purpose when it served

1 no professional purpose.

2 A victim is presumed "unable to give knowing consent" when
3 the victim:

4 (1) is committed to the care and custody or
5 supervision of the Illinois Department of Corrections
6 (IDOC) and the accused is an employee or volunteer who is
7 not married to the victim who knows or reasonably should
8 know that the victim is committed to the care and custody
9 or supervision of such department;

10 (2) is committed to or placed with the Department of
11 Children and Family Services (DCFS) and in residential
12 care, and the accused employee is not married to the
13 victim, and knows or reasonably should know that the
14 victim is committed to or placed with DCFS and in
15 residential care;

16 (3) is a client or patient and the accused is a health
17 care provider or mental health care provider and the
18 sexual conduct or sexual penetration occurs during a
19 treatment session, consultation, interview, or
20 examination;

21 (4) is a resident or inpatient of a residential
22 facility and the accused is an employee of the facility
23 who is not married to such resident or inpatient who
24 provides direct care services, case management services,
25 medical or other clinical services, habilitative services
26 or direct supervision of the residents in the facility in

1 which the resident resides; or an officer or other
2 employee, consultant, contractor or volunteer of the
3 residential facility, who knows or reasonably should know
4 that the person is a resident of such facility; or

5 (5) is detained or otherwise in the custody of a
6 police officer, peace officer, or other law enforcement
7 official who: (i) is detaining or maintaining custody of
8 such person; or (ii) knows, or reasonably should know,
9 that at the time of the offense, such person was detained
10 or in custody and the police officer, peace officer, or
11 other law enforcement official is not married to such
12 detainee.

13 "Victim" means a person alleging to have been subjected to
14 an offense prohibited by Section 11-1.20, 11-1.30, 11-1.40,
15 11-1.50, or 11-1.60 of this Code.

16 (Source: P.A. 102-567, eff. 1-1-22.)